

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PRINCE D. SHOTWELL

No. C-09-1341 TEH (PR)

Petitioner,

v.

ORDER DENYING PETITION FOR WRIT  
OF HABEAS CORPUS; DENYING  
CERTIFICATE OF APPEALABILITY

BEN CURRY, Warden,

Respondent.

Pro se Petitioner Prince Shotwell, a state prisoner incarcerated at the Substance Abuse Training Facility in Corcoran, California, seeks a writ of habeas corpus under 28 U.S.C. § 2254 challenging the California Board of Prison Hearings' ("BPH") December 26, 2006 decision denying him parole. Specifically, Petitioner claims the decision does not comport with due process because it is not supported by some evidence demonstrating that he posed a current threat to public safety and because BPH impermissibly relied on the immutable unchanging factors of the

1 commitment offense. Doc. #1 at 8, 15-21 & 22-26.<sup>1</sup>

2           The United States Supreme Court recently made clear that  
3 in the context of a federal habeas challenge to the denial of  
4 parole, a prisoner subject to a parole statute similar to  
5 California's receives adequate process when BPH allows him an  
6 opportunity to be heard and provides him with a statement of the  
7 reasons why parole was denied. Swarthout v. Cooke, No. 10-333, slip  
8 op. at 4-5 (U.S. Jan. 24, 2011) (per curiam). Here, the record  
9 shows Petitioner received at least this amount of process. The  
10 Constitution does not require more. Id. at 5.

11           The Court also made clear that whether BPH's decision was  
12 supported by some evidence of current dangerousness is irrelevant in  
13 federal habeas: "it is no federal concern . . . whether  
14 California's 'some evidence' rule of judicial review (a procedure  
15 beyond what the Constitution demands) was correctly applied."  
16 Swarthout v. Cooke, slip op. at 6. Accordingly, the instant federal  
17 Petition for a Writ of Habeas corpus is DENIED.

18           Further, a Certificate of Appealability is DENIED. See  
19 Rule 11(a) of the Rules Governing Section 2254 Cases. Petitioner  
20 has not made "a substantial showing of the denial of a  
21 constitutional right." 28 U.S.C. § 2253(c)(2). Nor has Petitioner  
22 demonstrated that "reasonable jurists would find the district  
23 court's assessment of the constitutional claims debatable or wrong."

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25           <sup>1</sup> Although Petitioner claims that BPH's denial also violated his  
26 right to equal protection, he does not explain how; rather he just  
27 includes the words "equal protection" in his point heading. See Doc.  
28 #1 at 8 & 22; id. at 22-26. The Court therefore does not address this  
issue.

1 Slack v. McDaniel, 529 U.S. 473, 484 (2000). Petitioner may not  
2 appeal the denial of a Certificate of Appealability in this Court  
3 but may seek a certificate from the Court of Appeals under Rule 22  
4 of the Federal Rules of Appellate Procedure. See Rule 11(a) of the  
5 Rules Governing Section 2254 Cases.

6 The Clerk shall terminate any pending motions as moot,  
7 enter judgment in favor of Respondent and close the file.

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9 IT IS SO ORDERED.

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11 DATED 02/03/2011

  
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THELTON E. HENDERSON  
United States District Judge

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